

## Remarks

In the present response, claims 4-26 and 28-31 are presented for examination.

### Claim Rejections: 35 USC § 103(a)

Claims 4 – 31 are rejected under 35 USC § 103(a) as being unpatentable over USPN 2001/0009005 (Godin) in view of “Canada: CN takes equity stake in FreightWise” (Freightwise) and USPN 5,826,244 (Huberman). Claims 6 and 18 are rejected under 35 USC § 103(a) as being unpatentable over Godin in view of FreightWise and USPN 6,202,051 (Woolston). These rejections are traversed.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art cited must teach or suggest all the claim limitations. See M.P.E.P. § 2143. For at least the following reasons, Applicant asserts that the rejection does not satisfy these criteria.

Godin “is directed to a method of auctioning products on-line where participants use computer terminals to access a computer site and participate” ({0006}). In short, Godin teaches a site for auctioning goods, not shipping services. Nowhere does Godin teach or even suggest auctioning for shipping services.

By contrast, FreightWise teaches an online marketplace that allows shippers and carriers to negotiate and execute freight transactions. “Sellers on FreightWise can offer their capacity through standard rates and auctions” (see paragraph 9 in FreightWise). In short, FreightWise teaches a site where shippers and carriers can negotiate for freight transactions. Nowhere does FreightWise teach or even suggest auctioning for goods.

No suggestion or motivation exists to combine the teachings of Sharp and the teachings of Godin into the same internet exchange portal. The Examiner is performing an improper piecemeal construction that uses hindsight to arrive at the claim elements. In other words, the Examiner is using knowledge of Applicant’s claims as a roadmap to pick, choose, and combine unrelated teachings from Godin and FreightWise. No motivation or suggestion, however, exists to combine these teachings. One cannot use

hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

The background portion of Applicant's specification discusses numerous problems associated with prior internet exchange portals, such as those taught in Godin and FreightWise. Specifically, these separate auctions are time consuming and laborious for buyers and sellers. Further, as noted in Applicant's background, such systems are not advantageous for the exchange portal either since it may not be timely paid for the auctions.

In order to remedy the shortcomings of the prior exchange portals (such as Godin and FreightWise), exemplary embodiments of Applicant's invention include aligning logistical flow with a single internet exchange portal. Applicant respectfully asks the Examiner to read the Summary section of the specification for numerous advantages. By way of example, claim 4 recites two different auctions on the same internet exchange portal. The first auction facilitates a sale of a good, and a second auction solicits bids for shipping services for the good. Unlike the teachings of Godin and FreightWise, the auctions for selling and shipping the goods are on the same internet exchange portal in the independent claims.

For at least these reasons, Applicant respectfully argues that a prima facie case of obviousness has not been established.

#### Response to Addition of Huberman

Huberman teaches an online auction for providing document services, such as printing, copying, and scanning. Huberman never teaches or even suggests that a same internet exchange portal facilitates two different auctions for both selling goods and shipping the sold goods. The Examiner cites Huberman at column 18, lines 51-67. Applicants respectfully disagree.

Huberman at column 18, lines 51-67 teaches that a buyer and seller at an auction can switch in subsequent auctions. Huberman provides an example wherein in a first auction a service provider contracts to provide services to a consumer. Then in a second auction the service provider is a buyer: "It [the service provider] can sell a document

service to an end consumer in a first auction, and buy the service or a portion or portions thereof in a second auction” (see Huberman at 18: 59-61). In other words, the seller sells in the first auction and then buys in the second auction.

Notice that nowhere does Huberman teach or even suggest that a same internet exchange portal facilitates two different auctions for both selling goods and shipping the sold goods. Instead, Huberman teaches that buyer and seller at an auction can switch roles in subsequent auctions. This teaching in Huberman of buyer and seller switching roles is very different than the elements recited in the claims. Claim 4 recites two different auctions on the same internet exchange portal. The first auction facilitates a sale of a good, and a second auction solicits bids for shipping services for the good.

For at least these reasons, Applicant respectfully argues that a prima facie case of obviousness has not been established.

Applicants further submit that the art of record does not teach or suggest all the elements. By way of example, claim 4 recites collecting shipping data for a contract resulting from the sale of a good. The claim then recites soliciting bids during a second auction and then “shipping the goods as required by the contract.” In other words, shipping data is collected during the sale of the good in a first auction. Then this shipping data is used to ship the good in a second auction. Nowhere does the art of record teach or suggest such elements.

Figures 11 and 12 in Godin show the collection of a name and address of the buyer in a first auction for the sale of a good. Godin never suggests that this name and address can be used in a subsequent second auction for shipping the goods. Freightwise and Huberman are also deficient. In other words, the Examiner has not shown where in the art of record a teaching or suggestion exists for collecting shipping data in a first auction for the sale of a good and then using this shipping data in a second auction for auctioning shipping services.

For at least these reasons, Applicant respectfully argues that a prima facie case of obviousness has not been established.

Challenge to Official Notice

The Examiner rejects claim 8 and takes official notice “that the grouping of contracts for transportation (loads) is old and well known the freight transport” (see OA at p. 4). The Examiner also rejects claim 14 and takes official notice “that a default selection absent an exact match was old and well known at the time of the invention” (see OA at p. 5).

Per MPEP § 2144.03, Applicant challenges the factual assertion as not properly officially noticed or not properly based upon common knowledge. As such, Applicant asks the Examiner to provide adequate **documentary evidence**.

Applicant contends that the noticed facts are not considered common knowledge or well-known in the art. Applicant respectfully asks the Examiner to produce authority (in the form of documentary evidence) for the alleged notice.

### **CONCLUSION**

In view of the above, Applicant believes that all pending claims are in condition for allowance. Allowance of these claims is respectfully requested.

Any inquiry regarding this Amendment and Response should be directed to Philip S. Lyren at Telephone No. 832-236-5529. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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